

September 30, 2020

Exhibit 1

Unofficial Draft Copy

As of: 2020/07/08 05:43:01

Drafter: Corina Hach, 406-444-4026

67th Legislature

PD 0009

**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE PROCESS FOR WATE RIGHT OWNERSHIP
UPDATES; AMENDING THE PENALTY FOR NONCOMPLIANCE; AND AMENDING SECTIONS 85-2-424
AND 85-2-431, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-424, MCA, is amended to read:

"85-2-424. Filing. (1) Except in the case of a transfer of real property served by a public service water supply, when a person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate must contain a water rights disclosure in which the transferor shall acknowledge, at or before closing or transfer of real property, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.

(2) (a) If the realty transfer certificate or another instrument discloses that the water rights will transfer with the property, the department's records must be updated department shall update its records to reflect the purchaser of the property as the new owner ship of the water right based on within 30 days of receipt of either:

(i) information received from the department of revenue if:

(A) the transferor of the property is the same as the owner of record for the water rights;

and

(B) the transferor conveys the entirety of the property associated with the place of use; or

Formatted: Indent: Left: 0.5"

(ii) an a correct and complete ownership update form provided by the department and submitted to the department with a copy of the recorded deed or deeds together with any other instrument confirming the transferee's ownership of each water right listed on the form.

(b) If the transferor of the property is not the same as the owner of record for the water rights, the department shall confirm chain of conveyance of the water right from the owner of record to the transferee. The

Unofficial Draft Copy

As of: 2020/07/08 05:43:01

Drafter: Corina Hach, 406-444-4026

PD 0009

67th Legislature

1 department shall notify the transferee of any defects in an ownership update within 90 days of submission.

2 ~~(b)(c)~~ The appropriate fee must be paid at closing or upon completion of the transfer of real property
3 as provided in 85-2-426.

4 ~~(e)(d)~~ The transferee of a water right, after receiving notice as provided in subsection ~~(2)(d)~~ (2)(e), is
5 responsible for compliance with this section.

6 ~~(d)(e)~~ If the department receives notice from the department of revenue that a property transfer has
7 occurred and the proper fee was not received by the department, the department shall send a notice to the
8 transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department
9 may assess a penalty against the transferee pursuant to 85-2-431.

10 (f) The department shall adopt rules that are necessary to determine whether an ownership update is
11 correct and complete.

12 (3) (a) Except as provided in subsection (3)(b), if the realty transfer certificate discloses the division
13 of the place of use of a water right among separate parcels, the person dividing each transferee receiving a
14 portion of the water right shall complete and file with the department a water right ownership update form, a
15 map, a copy of the deed or other instrument confirming the transfer, and the required fee.

16 (b) If a water right update ownership form is not filed by all parties pursuant to subsection (3)(a), the
17 owners must be reflected as co-owners on the water right.

18 (4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department,
19 on a form provided by the department, information describing the exempting of the water right and the
20 appropriate fee.

21 (5) If a person severs a water right from appurtenant property without ~~selling~~ conveying the property,
22 the person shall file with the department, on a form provided by the department, information describing the
23 severance, any deed or other instrument evidencing the severance, and the appropriate fee.

24 (6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water
25 right is being severed, divided, or exempted, the clerk and recorder may not record the deed or instrument
26 unless there is submitted with the deed or instrument a certification under penalty of false swearing, on a form
27 provided by the department and signed by the transferor and transferee, that states either:

28 (a) that the documents and fee necessary to comply with this section are held in escrow, in which

Unofficial Draft Copy

As of: 2020/07/08 05:43:01

Drafter: Corina Hach, 406-444-4026

67th Legislature

PD 0009

1 case the certification must also be signed by the escrow agent; or

2 (b) if there is no escrow, that the transferor and transferee certify that they have prepared the required
3 documents and will send the required documents and fee to the department within 60 business days of
4 recording, in which case the certification must also require the transferee to acknowledge that failure to file the
5 appropriate documents and fee with the department will result in the department assessing the penalty in 85-2-
6 431 against the transferee.

7 (7) Any written agreement to transfer land that has appurtenant water rights on record with the
8 department must contain the following disclosure or words of a similar nature:

9 "WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

10 By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to
11 the Montana Department of Natural Resources and Conservation for updating water right ownership may result
12 in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being
13 exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a
14 penalty against the transferee and rejection of the deed for recording."

15 (8) The department shall update its records to reflect new ownership without collection of a transfer
16 fee within 30 days of:

17 (a) receiving a withdrawal of a water right, or an interest in a water right, by an owner thereof in a
18 circumstance not subject to subsection (2);

19 (b) receiving an order from the water court that modifies or terminates ownership of a water right; or

20 (c) learning of a clerical error resulting from an error on a water right ownership update.

21 (9) (a) The department shall update its records to add or remove a party from the list of owners of a
22 water right within 30 days of receiving an order from a court of competent jurisdiction or department hearing
23 examiner.

24 (b) In the event of a dispute over the ownership of a water right, the department shall, within 30 days of
25 being notified of the dispute:

26 (i) certify the matter to the water court for resolution, if the controversy involves an existing water right
27 as defined in 85-2-102; or

28 (ii) certify the matter to the department hearing examiner for determination of ownership, if the

Formatted: Indent: Left: 0", First line: 0.5"

Unofficial Draft Copy

As of: 2020/07/08 05:43:01

Drafter: Corina Hach, 406-444-4026

PD 0009

67th Legislature

1 controversy involves a permit issued by the department. The hearing examiner's decision regarding
2 ownership may be appealed to a court of competent jurisdiction, where it will be subject to de novo
3 review.

4 (10) The department may not delay updating ownership based on non-payment of transfer fees by a
5 transferee. The department's sole remedy in the event of non-payment of transfer fees is to assess a
6 penalty and seek collection from the transferee pursuant to 85-2-431."

Formatted: Indent: Left: 0.5", First line: 0"

7
8 **Section 2.** Section 85-2-431, MCA, is amended to read:

9 **"85-2-431. Penalty.** (1) A person who fails to comply with the requirements of 85-2-424 is liable for a
10 civil penalty of not more than ~~\$75~~ \$200.

11 (2) An action to recover the penalty must be brought by the department and filed in the district court
12 for the first judicial district. At the discretion of the department, the judgment may be certified to the district court
13 in the county where the real property is located.

14 (3) The department is entitled to recover its reasonable costs for recovering the penalty, including but
15 not limited to attorney fees or charges assessed by a collection agency.

16 ~~(3)~~(4) Any penalty fee collected under this section must be deposited in the water right appropriation
17 account provided for in 85-2-318."

18
19 - END -

**** BILL NO. ****

INTRODUCED BY ****

BY REQUEST OF THE ****

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE PROCESS FOR WATER RIGHT OWNERSHIP
UPDATES; AMENDING THE PENALTY FOR NONCOMPLIANCE; AND AMENDING SECTIONS 85-2-424
AND 85-2-431, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 85-2-424, MCA, is amended to read:

"85-2-424. Filing. (1) Except in the case of a transfer of real property served by a public service water supply, when a person presents for recording a deed or other instrument evidencing a transfer of real property, the realty transfer certificate must contain a water rights disclosure in which the transferor shall acknowledge, at or before closing or transfer of real property, whether or not any water rights are associated with the property to be transferred and whether or not any water rights will transfer with the real property.

(2) (a) If the realty transfer certificate or another instrument discloses that the water rights will transfer with the property, the department's records must be updated department shall update its records to reflect the purchaser of the property as the new owner ship of the water right based on within 30 days of receipt of either:

(i) information received from the department of revenue if

(A) the transferor of the property is the same as the owner of record for the water rights;

and

(B) the transferor conveys the entirety of the property associated with the place of use; or

Formatted: Indent: Left: 0.5"

(ii) as a correct and complete ownership update form provided by the department and submitted to the department with a copy of the recorded deed or deeds together with any other instrument confirming the transferee's ownership of each water right listed on the form.

(b) If the transferor of the property is not the same as the owner of record for the water rights, the department shall confirm chain of conveyance of the water right from the owner of record to the transferee. The

Unofficial Draft Copy

As of: 2020/07/08 05:43:01

Drafter: Corina Hach, 406-444-4026

PD 0009

67th Legislature

1 department shall notify the transferee of any defects in an ownership update within 90 days of submission.

2 ~~(b)(c)~~ The appropriate fee must be paid at closing or upon completion of the transfer of real property
3 as provided in 85-2-426.

4 ~~(e)(d)~~ The transferee of a water right, after receiving notice as provided in subsection ~~(2)(d)~~ (2)(e), is
5 responsible for compliance with this section.

6 ~~(d)(e)~~ If the department receives notice from the department of revenue that a property transfer has
7 occurred and the proper fee was not received by the department, the department shall send a notice to the
8 transferee requesting payment of the fee. If the transferee does not pay the fee within 60 days, the department
9 may assess a penalty against the transferee pursuant to 85-2-431.

10 (f) The department shall adopt rules that are necessary to determine whether an ownership update is
11 correct and complete.

12 (3) (a) Except as provided in subsection (3)(b), if the the realty transfer certificate discloses the division
13 of the place of use of a water right among separate parcels, ~~the person dividing each transferee receiving a~~
14 portion of the water right shall complete and file with the department a water right ownership update form, a
15 map, a copy of the deed or other instrument confirming the transfer, and the required fee.

16 (b) If a water right update ownership form is not filed by all parties pursuant to subsection (3)(a), the
17 owners must be reflected as co-owners on the water right.

18 (4) If a person exempts a water right pursuant to 85-2-403, the person shall file with the department,
19 on a form provided by the department, information describing the exempting of the water right and the
20 appropriate fee.

21 (5) If a person severs a water right from appurtenant property without ~~selling~~ conveying the property,
22 the person shall file with the department, on a form provided by the department, information describing the
23 severance, any deed or other instrument evidencing the severance, and the appropriate fee.

24 (6) If the realty transfer certificate submitted with a deed or other instrument indicates that a water
25 right is being severed, divided, or exempted, the clerk and recorder may not record the deed or instrument
26 unless there is submitted with the deed or instrument a certification under penalty of false swearing, on a form
27 provided by the department and signed by the transferor and transferee, that states either:

28 (a) that the documents and fee necessary to comply with this section are held in escrow, in which

Unofficial Draft Copy

As of: 2020/07/08 05:43:01

Drafter: Corina Hach, 406-444-4026

67th Legislature

PD 0009

case the certification must also be signed by the escrow agent; or

(b) if there is no escrow, that the transferor and transferee certify that they have prepared the required documents and will send the required documents and fee to the department within 60 business days of recording, in which case the certification must also require the transferee to acknowledge that failure to file the appropriate documents and fee with the department will result in the department assessing the penalty in 85-2-431 against the transferee.

(7) Any written agreement to transfer land that has appurtenant water rights on record with the department must contain the following disclosure or words of a similar nature:

"WATER RIGHT OWNERSHIP UPDATE DISCLOSURE:

By Montana law, failure of the parties at closing or transfer of real property to pay the required fee to the Montana Department of Natural Resources and Conservation for updating water right ownership may result in the transferee of the property being subject to a penalty. Additionally, in the case of water rights being exempted, severed, or divided, the failure of the parties to comply with section 85-2-424, MCA, could result in a penalty against the transferee and rejection of the deed for recording."

(8) The department shall update its records to reflect new ownership without collection of a transfer fee within 30 days of:

(a) receiving a withdrawal of a water right, or an interest in a water right, by an owner thereof in a circumstance not subject to subsection (2);

(b) receiving an order from the water court that modifies or terminates ownership of a water right; or

(c) learning of a clerical error resulting from an error on a water right ownership update.

(9) (a) The department shall update its records to add or remove a party from the list of owners of a water right within 30 days of receiving an order from a court of competent jurisdiction or department hearing examiner.

(b) In the event of a dispute over the ownership of a water right, the department shall, within 30 days of being notified of the dispute:

(i) certify the matter to the water court for resolution, if the controversy involves an existing water right as defined in 85-2-102; or

(ii) certify the matter to the department hearing examiner for determination of ownership, if the

Formatted: Indent: Left: 0", First line: 0.5"

Unofficial Draft Copy

As of: 2020/07/08 05:43:01

Drafter: Corina Hach, 406-444-4026

PD 0009

67th Legislature

1 controversy involves a permit issued by the department. The hearing examiner's decision regarding
2 ownership may be appealed to a court of competent jurisdiction, where it will be subject to de novo
3 review.

4 (10) The department may not delay updating ownership based on non-payment of transfer fees by a
5 transferee. The department's sole remedy in the event of non-payment of transfer fees is to assess a
6 penalty and seek collection from the transferee pursuant to 85-2-431."

Formatted: Indent: Left: 0.5", First line: 0"

7
8 **Section 2.** Section 85-2-431, MCA, is amended to read:

9 **"85-2-431. Penalty.** (1) A person who fails to comply with the requirements of 85-2-424 is liable for a
10 civil penalty of not more than ~~\$75~~ \$200.

11 (2) An action to recover the penalty must be brought by the department and filed in the district court
12 for the first judicial district. At the discretion of the department, the judgment may be certified to the district court
13 in the county where the real property is located.

14 (3) The department is entitled to recover its reasonable costs for recovering the penalty, including but
15 not limited to attorney fees or charges assessed by a collection agency.

16 (3)(4) Any penalty fee collected under this section must be deposited in the water right appropriation
17 account provided for in 85-2-318."

18
19 - END -